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May 25, 1977

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ARIZONA ATTORNEY GENERAL

Suzanne Dandoy, M.D., M.P.H.  
Director  
Department of Health Services  
1740 West Adams  
Phoenix, Arizona 85007

Re: 77-111 (R77-84)

Dear Doctor Dandoy:

Your letter of March 8, 1977 requests our opinion concerning three questions involving the school immunization laws. Your first question is: If the parent, guardian or person in loco parentis refuses to submit one of the statements required by A.R.S. § 15-342, must the school administrator refuse to enroll the child?

The language of A.R.S. § 15-342 is clear and unambiguous. In pertinent part it provides:

. . . prior to the initial enrollment in any common school in this state, the parent or guardian or person in loco parentis of a child shall submit to the school administrator an immunization record of such child. Such record shall contain one of the following statements . . .:

1. That the child has received the initial immunizations prescribed . . .

2. That the . . . initial immunizations would seriously endanger the child's health.

3. That the child . . . is being reared as an adherent to a religion . . . opposed to such immunizations.

4. That the child's necessary immunizations will be completed within the school year of initial enrollment. (Emphasis supplied.)

Suzanne Dandoy, M.D., M.P.H.  
May 25, 1977  
Page Two

In the absence of a record containing one of these statements the statute provides the school administrator no alternative but to refuse enrollment to the child, therefore, our response to your first question is yes.

The first part of your second question is: If the patient, guardian or person in loco parentis signs a statement that immunizations will be completed during the school year of initial enrollment, who is responsible for determining compliance?

Since the school administrator may not enroll a child without having received one of the four statements, having received the statement promising the completion of necessary immunizations, the burden of determining whether the promise was fulfilled remains with him. In most instances ascertaining compliance will not be difficult because the promised immunizations will be given during the school year through the school's own immunization program. If the immunizations are obtained elsewhere, it may be necessary to have the parent, guardian or person in loco parentis file with the school administrator an assurance similar to the first one of the four statements (that the child has received the immunizations prescribed).

The second part of your second question is: Is there a penalty for non-compliance with a promise to complete enrollment within the school year?

The statement "[t]hat the child's necessary immunizations will be completed within the school year of initial enrollment" is, in effect, a promise. The enrollment of the child during the initial year is based on the condition that the promise will be fulfilled. If at the conclusion of the school year the condition has not been fulfilled, the child should be refused further enrollment until the parent submits a statement to the effect that the immunizations have been received by the child or, when applicable, that the child's health would be endangered or that the child is being reared as an adherent of a religion opposed to such immunizations. Notice should be given to non-complying parents before the close of the school session so that they will have the opportunity to submit statements of immunization prior to the normal deadline for reregistration.

Persons having custody of children between the ages of eight and eighteen must send those children to public school unless certain enumerated exceptions are met. A.R.S. § 15-321. A child's custodian failing to satisfy this requirement

Suzanne Dandoy, M.D., M.P.H.  
May 25, 1977  
Page Three

is subject to punishment as a misdemeanor. A.R.S. § 15-323. Accordingly the failure of a child's custodian to satisfy one of the alternative immunization provisions of A.R.S. § 15-342 may subject the parent to punishment for constructive failure to send that child to school.

Your third question is: If an outbreak of an immunizable disease occurs in a school, is there any means of preventing children not immunized against the disease from attending school?

Arizona Revised Statutes, Title 36, Chapter 6, Article 2. Contagious diseases, contains provisions which authorize a variety of activities which may be undertaken to prevent the spread of contagious diseases. Quarantine of the person who has or is reasonably suspected of having a contagious disease is one most frequently mentioned. However, A.R.S. § 36-629.F. provides:

No minor child shall be permitted to attend a public school in the state during a period in which a smallpox epidemic is prevalent in the school district unless the child has been vaccinated.

There is no other statute which specifically authorizes the exclusion of unimmunized children from school. However, the director is authorized to adopt regulations which

Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The regulations shall declare certain diseases reportable and shall further establish minimum periods of isolation or quarantine and shall prescribe measures reasonably required to prevent the occurrence of, or to seek early detection and alleviation of disability, insofar as possible, from communicable or preventable diseases. The regulations shall include reasonably necessary measures to control animal diseases transmittable to man. (A.R.S. § 36-1367.G.1.)

If the exclusion of unimmunized children from school during a disease outbreak to be a "measure reasonable required to prevent the occurrence of . . . communicable or preventable diseases", the Director may adopt regulations which define the circumstances under which such measures might be taken.

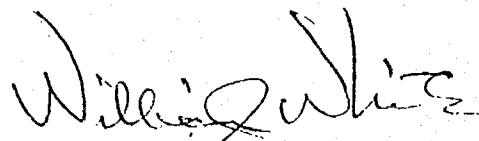
Suzanne Dandoy, M.D., M.P.H.  
May 25, 1977  
Page Four

It is interesting to note that the Arizona Supreme Court upheld an Order issued by a local Board of Health which closed schools and other places of assembly during the Spanish influenza epidemic of 1918. Globe School Dist. No. 1 v. Board of Health of the City of Globe. 20 Ariz. 208, 179 Pac. 55 (1919). At page 218 of that decision the Court said:

The adoption by the city local board of health of section 11, the order closing the public schools during the rage of the said epidemic of Spanish influenza, for the purpose of preventing the spread of such epidemic, was a valid measure, adopted within the power of the local city board under the authority of subdivision 3 of paragraph 4370 (authority to adopt regulations to prevent the spread of contagious diseases) and on the approval of the State Superintendent of Public Health. Necessity is the law of time and place, and the emergency calls into life the necessity for the operation of the law. The emergency calls forth the occasion to exercise the power to protect the public health.

Sincerely,

BRUCE E. BABBITT  
Attorney General



WILLIAM J. WHITE  
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